

Notice of Allowability

Application No.

10/669,457

Examiner

Timothy M. Ayres

Applicant(s)

GILMAN, BARRY E.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 11/16/06.
2. ☒ The allowed claim(s) is/are 1-9 and 19.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Victor Kernus on 1/29/07.

The application has been amended as follows:

Claim 1, line 10, after the word "element", ---slidably--- is inserted therein

Claim 1, line 10, after the word "mounted", ----over an upper edge of the front wall--- is inserted therein

Claim 1, lines 13-14, the phrase "one of the front and rear walls" is deleted and replaced with ---the front wall---

Claim 3, line 10, after the word "element", ---slidably--- is inserted therein

Claim 3, line 10, after the word "mounted", ----over an upper edge of the front wall--- is inserted therein.

Claim 3, line 12, the phrase "one of the front and rear walls" is deleted and replaced with ---the front wall---

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Claim 5, line 10, after the word "element", ---slidably--- is inserted therein

Claim 5, line 10, after the word "mounted", ----over an upper edge of the front wall--- is inserted therein

Claim 5, lines 12, the phrase "one of the front and rear walls" is deleted and replaced with ---the front wall---

Claim 19, line 2, after the word "comprising:" ---providing a shelving unit, including front, rear, bottom, and opposing side walls, for supporting food items in the refrigerator;--- is inserted therein

Claim 19, line 3, the phrase "positioning the food items" is changed to ---positioning food items---

Claim 19, lines 3-4, the phrase ", having front, rear, bottom and laterally spaced side walls" has been deleted

Claim 19, line 4, the phrase "movably attached to" has been deleted and replaced with ---slidably supported on an upper edge of the front wall of---

Claim 19, line 9, the phrase "one of the front and rear walls" is deleted and replaced with ---the front wall---

Claim 21 is canceled.

2. The following is an examiner's statement of reasons for allowance: Claims 1, 3, 5, and 19 as now amended include a refrigerator divider that is slidably mounted/supported over an upper edge of the front wall of a shelving unit and a biasing

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element closely adjacent to the front wall. US Patent 4,770,314 to Giesler teaches a refrigerator divider element that slides on a track on the inside of the front wall. US Patent 6,409,028 to Nickerson teaches a biasing element with divider that slides in a track along a side wall as seen in figure 9. US Patent 5,765,390 to Johnson teaches a divider element slideably mounted over a rear wall as seen in figures 4-6. The novelty of the applicant's invention lies in the fact that the biasing element does not require a track. The combination of Giesler in view of Nickerson would require a track along the front wall in order for the biasing element to function. While Johnson does teach the use of a biasing element slideably mounted over an upper edge of a wall, making a modification of Giesler in view of Nickerson would destroy the structure required for the biasing element to function.

3. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

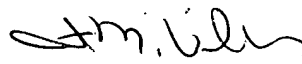
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TMA
1/30/07



JANET M. WILKINS
PATENT EXAMINER

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